

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BOARD OF REGENTS OF THE)
UNIVERSITY OF NEBRASKA,)
)
 Plaintiff,) 4:04CV3356
)
 v.)
)
 BASF CORPORATION,) MEMORANDUM AND ORDER
)
 Defendant,)
)
 and)
)
 MONSANTO COMPANY,)
)
 Intervening Plaintiff,)
)
 v.)
)
 SYNGENTA CROP PROTECTION,)
 INC.,)
)
 Intervening Defendant.)

Pursuant to the scheduling order entered in this case, the deadline for filing motions to amend pleadings and/or add parties was December 1, 2006.

The following flurry of filings occurred on December 1, 2006:

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- Plaintiff Board of Regents filed an Amended Complaint against BASF. Filing 149. Although BASF had previously filed an answer and counterclaims against the Board of Regents in response to the plaintiff's initial complaint, (filing 30), plaintiff Board of Regents did not file a motion for leave to file its filing 149 amended complaint.

- BASF filed an amended answer to the Board of Regents "Complaint," along with counterclaims and cross-claims. Filing 151. BASF did not move for leave to amend its prior answer and counterclaims. BASF's filing 151 amended answer does not state or indicate that it was filed in response to the Board of Regents' filing 149 Amended Complaint. Rather, it appears to have been filed in response to the initial complaint. Nonetheless, both the plaintiff Board of Regents and intervening plaintiff Monsanto have now filed a reply to BASF's amended counterclaims. Filings 153 and 154.

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- Intervening plaintiff Monsanto filed a Second Amended Complaint in Intervention, filing 144, on the morning of December 1, 2006, and separately filed a motion for leave to file the Second Amended Complaint in Intervention (filing 144) that afternoon. Filing 148.
- In the interim between Monsanto's filings, Syngenta filed a motion for leave to file a First Amended Answer in response to Monsanto's First Amended Complaint in Intervention, and its First Amended Counterclaim. Filing 145. Syngenta's motion and supporting brief both state that a copy of its proposed amended pleadings are attached as exhibit A, but there is no attachment to either of these filings. See filing 145 (motion), p. 1; filing 146 (brief), p.3. Rather, Syngenta separately filed its First Amended Answer in response to Monsanto's First Amended Complaint and its First Amended Counterclaim against Monsanto. Filing 147.

As the foregoing demonstrates, it is difficult to decipher the current state of the pleadings in this case, primarily because the parties failed to comply with the Federal rules of Civil Procedure and the local rules of this court. The court's progression order stating "[a]ny motion to amend pleadings and/or add parties shall be filed by December 1, 2006" did not authorize the parties to file amended pleadings without leave of the court. Moreover, even when motions were filed, the proposed amended pleadings were not attached to the motion as required under

NECivR 15.1(a), but rather independently filed without leave or the court. There is nothing of record indicating the motions were unopposed. See NECivR 15.1(a).

Since it appears from this record that none of the parties wishes to pursue this action on the pleadings properly filed of record, and that some of the proposed amendments are presented in response to pleadings which may themselves be amended,

IT IS ORDERED:

1. The plaintiff Board of Regents is given until January 2, 2007, to file any motion to file an amended complaint in accordance with this court's local rules. See NECivR 7.1 and 15.1(a). If such a motion is filed, on or before January 12, 2007, all other parties shall either advise the court that they do not oppose the filing of the Board of Regents' proposed amended complaint, or they shall file a brief opposing the Board of Regents' motion for leave to amend. No reply brief shall be permitted absent leave of the court for good cause shown.
2. Filings 151, 153, and 154 are stricken without prejudice to re-filing as appropriate following a ruling on the Board of Regents' anticipated motion for leave to file an amended complaint.
3. Filing 144 is deemed an attachment to Monsanto's filing 148 motion for leave to file a Second Amended Complaint in Intervention.
4. The clerk shall enter the following notation on the docket entry for filing 144: "This filing is deemed an attachment to filing 148."
5. On or before January 12, 2007, the parties shall either advise the court that they do not oppose the filing of Monsanto's proposed Second Amended Complaint in Intervention (filing 144), or they shall file a brief opposing Monsanto's motion for leave to amend, filing 148. No reply brief shall be permitted absent leave of the court for good cause shown.

6. Filings 145, 146, and 147 are stricken without prejudice to re-filing in accordance with this court's local rules, (see NECivR 7.1 and 15.1(a)), if Monsanto's motion for leave to amend, filing 148, is denied.
7. In an effort to avoid such complexities, confusion, and potential misunderstandings in the future, counsel for the parties shall read and/or remind themselves of the requirements of this court's local rules and shall comply with these rules.

DATED this 22nd day of December, 2006.

BY THE COURT:

s/ *David L. Piester*
David L. Piester
United States Magistrate Judge